

REMARKS

Favorable reconsideration of this application in light of the following election and remarks is respectfully requested.

No claims having been canceled or added, the Applicants respectfully submit that claims 1-35 and 44-55 remain under consideration in this application.

Species Restriction

The Examiner is also requiring an election of species from among four identified species, including:

Species 1 in which the nitride layer is formed by a low pressure chemical vapor deposition (LPCVD);

Species 2 in which the nitride layer is formed by a rapid thermal nitridation;

Species 3 in which the nitride layer is formed by nitriding (by a plasma process); and

Species 4, in which the nitride layer is formed by nitriding (by a thermal annealing process).

Action at 2.

Species Election

In response to the Examiner's restriction requirement, Action at 2, the Applicants elect, with traverse, Species 1, in which the oxidation preventing layer is a nitride layer is formed by LPCVD, for prosecution in this application. The Applicants further contend that at least claims

1-4, 9, 16-25, 32-35, 44-51 and 53-55 are generic and that claims 5 and 6 are specific to the elected species. Further, the Applicants respectfully contend that the differences between the identified species relates solely to the method utilized in the step of forming the oxidation preventing layer and that, as illustrated by claim 48 and the knowledge of one of ordinary skill in the art, these methods have a similar functionality with respect to the claimed method and, therefore, at least species 2-4 are generally suitable for inclusion in a single Markush group. The Applicants further note that, as provided in MPEP § 803.02:

If the members of the Markush group are sufficiently few in number or so closely related that a search and examination of the entire claim can be made without serious burden, the examiner must examine all claims on the merits, even though they are directed to independent and distinct inventions. In such a case, the examiner will not follow the procedure described below and will not require restriction.

In this instance, the Applicants respectfully contend that the recited processes are “sufficiently few in number,” and that the Examiner has not demonstrated that any “serious burden” would result from searching and examining each of the identified “species.” The Applicants respectfully contend, therefore, that the “heavy burden” requirement for maintaining a species election is not sufficiently supported by the present record. The Applicants respectfully contend, therefore, that this species election should be withdrawn and the generic claims and those claims drawn to the four identified “species” should be examined together.

For all of the above stated reasons, reconsideration and withdrawal of the pending election requirement and favorable action on all claims in the instant application are earnestly solicited by the Applicants.

Attorney Docket No: 2557-000048/US
Application No. 09/008,525

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

HARNESS, DICKEY & PIERCE, PLC

By _____

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